

INDEX

	Page
Opinions below.....	1
Jurisdiction.....	1
Questions presented.....	2
Statutes involved.....	2
Statement.....	2
Argument.....	11
Conclusion.....	13
Appendix.....	14

CITATIONS

Cases:

<i>Chaplinsky v. New Hampshire</i> , 315 U. S. 568.....	13
<i>Davis v. Beason</i> , 133 U. S. 333.....	13
<i>Leach v. Carlile</i> , 258 U. S. 138.....	13
<i>National Broadcasting Co. v. United States</i> , 319 U. S. 190..	13
<i>Neher v. Harwood</i> , 128 F. 2d 846, certiorari denied, 317 U. S. 659.....	12
<i>Reynolds v. United States</i> , 98 U. S. 145.....	13
<i>United States v. Ballard</i> , 322 U. S. 78.....	12
<i>United States v. Carruthers</i> , 152 F. 2d 512, certiorari denied, 327 U. S. 787.....	12

Constitution and Statutes:

First Amendment.....	11
R. S. 3929, 39 U. S. C. 259.....	14
R. S. 4041, 39 U. S. C. 732.....	15

Miscellaneous:

Federal Rules of Civil Procedure (28 U. S. C. 723 (c) note) Rule 56 (b).....	11
---	----

THE HISTORY OF THE

INDIAN NATIONS

OF

THE

WEST

INDIA

AND

THE

WEST

INDIA

AND

THE

WEST

INDIA

AND

In the Supreme Court of the United States

OCTOBER TERM, 1947

No. 284

REV. E. B. FIELDS, PETITIONER

v.

ROBERT E. HANNEGAN, POSTMASTER GENERAL OF
THE UNITED STATES

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED
STATES COURT OF APPEALS FOR THE DISTRICT OF
COLUMBIA

BRIEF FOR THE RESPONDENT IN OPPOSITION

OPINIONS BELOW

The District Court of the United States for the District of Columbia rendered no opinion in this case. The *per curiam* opinion of the Court of Appeals for the District of Columbia (R. 134-135) is reported at 162 F. 2d 17.

JURISDICTION

The judgment of the Court of Appeals was entered on June 2, 1947 (R. 136). The petition for a writ of certiorari was filed on August 20, 1947. The jurisdiction of this Court is invoked

under Section 240 (a) of the Judicial Code, as amended by the Act of February 13, 1925.

QUESTIONS PRESENTED

1. Whether a postal fraud order issued in connection with petitioner's business enterprise was in violation of the constitutional guarantee of religious freedom because religious references were interspersed in the fraudulent representations made by him.

2. Whether, in light of the undisputed facts appearing from the record of the proceedings before the Post Office Department, the district court erred in entering a summary judgment for respondent in a suit to enjoin enforcement of the fraud order.

STATUTES INVOLVED

The statutes involved, R. S. §§ 3929 and 4041, are set forth in the Appendix, *infra*, pp. 14-16.

STATEMENT

In August and September of 1944, the Post Office Department advised petitioner that he had been charged with violating the postal fraud statutes by engaging in a scheme for obtaining money through the mails by means of false and fraudulent pretenses, representations and promises to the effect (1) that he was a "Success Master"; (2) that his method constituted a "great science"; (3) that his method would enable persons quickly, every time and without

fail, to obtain success, to solve all their personal problems, to secure an abundance of money, to heal and banish all sickness, to achieve a return to good health, and to accomplish anything they might desire regardless of what it might be; and (4) that that method included personal treatment of each remitter by petitioner (R. 14-15). Petitioner was afforded an opportunity to show cause on September 8, 1944, why a fraud order should not be issued against him (R. 12-15).¹

A hearing was thereupon held on September 8, 1944, and although petitioner did not appear (R. 45), he did, through counsel, file an answer denying the charges and an affidavit in support of that denial (R. 18-25, 56-57). These were read into the record (R. 57-59) and together with the evidence adduced by the Government constituted the record of the proceedings before

¹The memorandum of charges against petitioner (R. 14-15) with notice of hearing (R. 12-13), both addressed to "Fields, Rev. Fields, Rev. E. Fields, and B. Fields, Brooklyn, New York," were initially forwarded from Washington to the postmaster at Brooklyn, New York, for delivery to petitioner (R. 47). Petitioner refused to accept them unless they were addressed to him alone (R. 16), but they were nevertheless left with him, on August 31, 1944, by the postal inspector who had conducted the investigation (R. 17-18, 49-50). Petitioner thereupon returned the notice and memorandum in their envelope, unopened, to the Washington office of the Post Office Department (R. 53-55), and on September 2, 1944, a registered letter addressed to him only as "Rev. E. Fields" and containing copies of the memorandum and notice was delivered to him (R. 55-56).

the Assistant Solicitor of the Post Office Department (R. 43-131). From this record, the following facts appear:

Petitioner's misuse of the mails first came to the attention of the Post Office Department in March 1939, by his offer, through newspaper advertisements, of "lucky numbers, dream books," etc., with the statement "Just pay after Hit happens, daily 10 to 5"; upon investigation, petitioner modified his advertisements, and the case was closed (R. 29, 60). In August 1941, petitioner again was investigated with respect to his solicitation of contributions for the alleged purpose of establishing a church; petitioner admitted that the collections were being used in part for living expenses, and upon his agreement to discontinue such solicitation, the investigation was again closed (R. 29-30, 60, 61-62). In March 1942, once more, it appeared that petitioner was offering, by advertisement, to furnish "success, good health and happiness" for \$10, his "direct system" for \$2, or his "special" for \$4; after a call from the postal inspector, petitioner agreed to discontinue that enterprise and, in May 1942, he directed the postmaster at Brooklyn, N. Y., to return mail addressed to him endorsed "Out of Business" (R. 30, 60-61). In September 1942, however, petitioner rescinded that direction (R. 30, 62), and with the receipt of a complaint from a resident of Goulds, Florida, the case was

reopened on November 1, 1943 (R. 63). That complaint was, in substance, as follows (R. 64):

* * * I saw an advertisement in a Pennsylvania paper wherein Rev. E. Fields represented that he could cure various ailments. I later saw an advertisement in the Miami Whip which was something different from the one in the Pennsylvania paper.

I wrote Rev. Fields a letter and told him I was suffering from a chest cold and a doctor told me it was asthma. I later received a letter from Rev. Fields stating that he would cure me if I would pay him \$20.00. He agreed that I could pay him \$4.00 then and send him the balance in easy monthly payments. I sent money order No. 97914 on August 14, 1943.

I later received a letter from Fields asking me to sign and send to him a blue blank. I never signed the blank. I have never received any medicine, perfume, or any instructions for the treatment of my ailment nor have I received a refund of my money.

Investigation, including a series of test correspondence, disclosed that petitioner carried on his business somewhat as follows: He would insert in various newspapers throughout the United States, advertisements bearing headings such as "Quickest Success Master," and "Quickest Success Helper"; promising "Success and Happiness, Money, Quick Prosperity, New Start"; and offer-

ing, for a remittance of 10 cents, "Special Successful free information" and a solution to "All Problems" (R. 65-69). Generally, these advertisements made no reference whatsoever to religious subjects. To those responding to the advertisements and remitting the 10 cents, petitioner would send vari-colored circulars bearing pictures of clasped hands, bags of money, etc., and containing statements of which the following, gleaned from one circular, are typical: "Enjoy Money Quick Success * * * Heal all Sickness Without Medicine * * * Ps-Num E rology, Sure Winners * * * Get a Quick New Start in Life * * * Truly You can obtain Prosperity, Happiness, Plenty * * * Send for this real true method right now and secure for yourself abundance of money, perfect Love, Health, happiness—and whatever else your heart may desire * * * In all troubles, You may also See Him in Person, by Special appointment * * * Money When You Want It * * * Special Guaranteed Strictly Method unwager Method Strictly Deity's * * * Race Special Policy Clearing Boleata and Cuba, Saves and Keeps * * * Astrology, What is Your Lucky Star, Ps-Numbers and Best Days, Astrol-ogy" (R. 75-78; see, also, R. 4-7). Interspersed in the circulars and mainly on their reverse sides, there were apparently unrelated references to the Deity and the Scriptures. (See, *e. g.*, R. 75-78.)

One of the circulars would include a blank perforated for detachment and reading as follows (R. 80):

**SPECIAL GUARANTEED—REV. E. FIELDS —
GUARANTEED SPECIAL**

670½ GATES AVENUE, BROOKLYN, N. Y.

I do hereby send \$4, or \$-----, for Perfume Oil of attraction, or \$4, or \$-----, as a deposit for Special Quick Success Emblem, scientific Product Life Time daily Guide and your Person Treatment and Printed affirmation for Quick Satisfaction.

Just give according to amount of Success and things you purpose to Receive.

Special, You freely give this as faith is Substance of things hoped for, Special?

* * * * *

We give all until it hurts today and Success may bring double Money tomorrow.

My Special Successful information Never fail to Win, You Special Successful.

Upon receipt of at least \$2, petitioner would send the remitter a carboard box containing a small bottle of perfumed oil labeled "alleged Attraction Oil—Nidia Botanical Garden" (4 drams for a \$4 remittance; 2 drams for a \$2 remittance); the "Special Quick Success Emblem," a card upon which appeared a sketch of an angel, the words "The Lord is Risen" and "Luck's in the Lord, Luck's Obedient Faith is the Key," and a

— sketch of a horseshoe with the words "Good Luck" and "Lucky Charm Mystic Success and Happiness. Just Carry in Purse, Daily"; and one or two typewritten quotations, allegedly from the Bible, or, in some cases, merely typewritten lists of numbers (R. 21, 86-87, 90). Although at one point in an affidavit made by petitioner, he referred to the oils he was selling as "religious oils" (R. 103), he later denied that they were advertised or intended as religious oils (R. 113) and admitted that they were "alleged to attract by scent and no other way" (R. 105), that they had no "intrinsic merit to relieve distress, soothe the troubled or to bring success" (R. 23), and that he did not know what the "Nidia Botanical Garden," which appears on the bottle's label, meant (R. 105).^{*} Nor did he claim that the Success Emblem "*per se* has any force or merit" (R. 22).

Nevertheless, as a test series of correspondence conducted by the postal inspector disclosed, repeated and urgent demands made of petitioner by remitters of the \$2 or \$4 who had expected more

^{*} Petitioner had the oils mixed by a wholesale house in New York in accordance with his "preference of scent," purchased the labels, and bottled the oils and labeled the bottles himself (R. 104-105). He estimated his earnings from this enterprise at approximately \$2,000 per year (R. 107).

for their money would gain them nothing beyond the scented oil, emblem, and typewritten quotations, except possibly additional typewritten lists of cryptic numbers (R. 83-90). Petitioner admitted that this was all he intended to furnish for the money sent to him (R. 21, 110).

Petitioner denied that his advertisements and circulars promised "to send anybody success by the use of any success method of mine, and especially by the use of my goods or products" (R. 24). He dismissed the notion that some people might be deceived by his advertisements: " * * * it is not my business to know or care anything about who may or may not understand the same, especially if and when they sign their name to my contract as aforesaid and send me their or my money" (R. 115). He stated that all requests for refunds were consigned to "the waste-paper basket" (R. 117), remarking that " * * * if my customers want refunds they can hold God responsible if success is not attained by my method * * *" (R. 109). In substance, his defense was that his method was "the method of the Scriptures" (R. 23), "the distribution to my customers of an agreed consideration of certain known and accepted truths as founded in the Bible" (R. 22), and that the use of the oil "in

full faith that God will help the supplicant, is believed to be of great value" (R. 23).³

After the hearing was held before the Assistant Solicitor of the Post Office Department, a copy of the transcript of the proceedings was sent to petitioner's counsel, and he was invited to submit a brief, argument, or proposed findings of fact and of law on the question whether a fraud order should issue (R. 27-28). Petitioner ignored that invitation, however, and on December 26, 1944, the Postmaster General issued the fraud order here involved, prohibiting the payment of any postal money order drawn to petitioner's order and directing the return of all letters and other mail matter to the postmasters at the offices at

³ Petitioner strained to paint his advertisements and circulars as religious literature. For example, he contended that the words "scientific product," "Life Time Guide" and "printed affirmation" on the order blank really meant the Bible, although the Bible was never mentioned (R. 105-106); that the use of the words "guarantee" or "guaranteed" referred to the guarantee derived from trust in the Lord (R. 108); that "straight dope win you straight" meant the Bible (R. 110); and that "Ps—Num E rology" meant numbers of chapters of the Bible (R. 111).

Petitioner claimed to be the pastor of The True Light Spiritual Church of Christ, conducted at the address where he resided, which was incorporated (apparently by him) in 1938 (R. 104). The postal inspector was unable, however, to discover any facility for religious meeting or worship at the designated address (R. 119-120), and, in any event petitioner himself stated that the business involved here had no connection with the church (R. 104) and that the enterprise was carried on "for a living for myself and my family" (R. 109).

which they were originally mailed for delivery to the senders with the words "Fraudulent: Mail to this address returned by order of Postmaster General" written or stamped upon the outside of such mail (R. 41-42).

Petitioner thereafter filed a complaint in the District Court of the United States for the District of Columbia requesting an injunction against enforcement of the fraud order (R. 1-3). Motions to dismiss the complaint for failure to state a claim for relief and for summary judgment pursuant to Rule 56 (b) of the Federal Rules of Civil Procedure (28 U. S. C. 723 (c) note, Rule 56 (b)), thereupon interposed on behalf of respondent (R. 8), were granted, the complaint dismissed on the merits, and judgment entered for respondent (R. 131-132). An appeal was then taken to the United States Court of Appeals for the District of Columbia (R. 132-133), which, in a *per curiam* opinion, affirmed the judgment of the district court (R. 134-136).

ARGUMENT

1. The religious freedom guaranteed by the First Amendment has not been violated by the fraud order entered in this case. As the Court of Appeals found, petitioner's advertising matter was not religious literature (R. 135). The newspaper advertisements generally contained no religious allusions whatever (R. 65-69), and the smattering of references to Deity and Scriptures

in the circulars was eclipsed by the offers of mundane bounties such as quick money, prosperity, and plenty, strengthened by insinuations of lucky numbers, astrological advice, and the like (R. 75-78).

2. Even were we to assume that petitioner's enterprise was in some aspects religious in character, petitioner could not on that account obtain constitutional immunity for fraud. The Postmaster General was amply justified in holding petitioner's enterprise was essentially a scheme to defraud. Each of petitioner's advertisements and circulars "bristles with the indicia of deception and fraud." *Neher v. Harwood*, 128 F. 2d 846, 853 (C. C. A. 9), certiorari denied, 317 U. S. 659. The record contains ample demonstration of petitioner's bad faith in conducting his business and of his utter disregard for the likelihood that readers of his advertisements and literature might be deceived to their prejudice. (See, *e. g.*, R. 24, 109, 115, 117.) In such circumstances, the Postmaster General was warranted in finding that petitioner himself did not believe his representations and promises and, that, consequently, he was guilty of fraud when he made them. The issuance of a fraud order directed at such fraudulent representations is hardly a blow at religious freedom. *United States v. Ballard*, 322 U. S. 78; *United States v. Carruthers*, 152 F. 2d 512 (C. C. A. 7), certiorari denied, 327 U. S. 787. The cases cited by petitioner (Pet. 12, 13) are not in

conflict. They eloquently assert the breadth of our concept of religious freedom. But broad as that concept is, it does not protect conduct violative of a statute enacted for the protection of the community from fraud and deception. *Chaplinsky v. New Hampshire*, 315 U. S. 568, 572; *Davis v. Beason*, 133 U. S. 333; *Reynolds v. United States*, 98 U. S. 145, 166.

3. There was no error in the entry of a summary judgment for respondent in the district court. It is settled that judicial review of postal fraud orders is limited to a determination of whether the ruling of the Postmaster General was "fairly arrived at and has substantial evidence to support it * * *." *Leach v. Carlile*, 258 U. S. 138, 140. In the light of the undisputed facts in this proceeding, the case was an appropriate one for summary judgment. *National Broadcasting Co. v. United States*, 319 U. S. 190, 227.

CONCLUSION

It is respectfully submitted that the petition for a writ of certiorari should be denied.

✓ PHILIP B. PERLMAN,
Solicitor General.

✓ PEYTON FORD,
Assistant Attorney General.

✓ SAMUEL D. SLADE,

✓ HARRY I. RAND,

Attorneys.

SEPTEMBER 1947.

APPENDIX

1. R. S. 3929, 39 U. S. C. 259 reads as follows:

The Postmaster General may, upon evidence satisfactory to him that any person or company is engaged in conducting any lottery, gift enterprise, or scheme for the distribution of money, or of any real or personal property by lot, chance, or drawing of any kind, or that any person or company is conducting any other scheme or device for obtaining money or property of any kind through the mails by means of false or fraudulent pretenses, representations, or promises, instruct postmasters at any post office at which registered letters or any other letters or mail matter arrive directed to any such person or company, or to the agent or representative of any such person or company, whether such agent or representative is acting as an individual or as a firm, bank, corporation, or association of any kind, to return all such mail matter to the postmaster at the office at which it was originally mailed, with the word "Fraudulent" plainly written or stamped upon the outside thereof; and all such mail matter so returned to such postmasters shall be by them returned to the writers thereof, under such regulations as the Postmaster General may prescribe. Nothing contained in this section shall be so construed as to authorize any postmaster or other person to open any letter not addressed to himself. The public advertisement by such person or company so con-

ducting such lottery, gift enterprise, scheme, or device, that remittances for the same may be made by mail to any other person, firm, bank, corporation, or association named therein shall be held to be prima facie evidence of the existence of said agency by all the parties named therein; but the Postmaster General shall not be precluded from ascertaining the existence of such agency in any other legal way satisfactory to himself.

2. R. S. 4041, 39 U. S. C. 732 reads as follows:

The Postmaster General may, upon evidence satisfactory to him that any person or company is engaged in conducting any lottery, gift enterprise, or scheme for the distribution of money, or of any real or personal property by lot, chance, or drawing of any kind, or that any person or company is conducting any other scheme for obtaining money or property of any kind through the mails by means of false or fraudulent pretenses, representations, or promises, forbid the payment by any postmaster to said person or company of any postal money orders drawn to his or its order, or in his or its favor, or to the agent of any such person or company, whether such agent is acting as an individual or as a firm, bank, corporation, or association of any kind, and may provide by regulation for the return to the remitters of the sums named in such money orders.

This shall not authorize any person to open any letter not addressed to himself.

The public advertisement by such person or company so conducting any such lottery,

gift enterprise, scheme, or device, that remittances for the same may be made by means of postal money orders to any other person, firm, bank, corporation, or association named therein shall be held to be prima facie evidence of the existence of said agency by all the parties named therein; but the Postmaster General shall not be precluded from ascertaining the existence of such agency in any other legal way.